

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KIMBERLEE D. KING
Deputy Attorney General
4 State Bar No. 141813
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2013 - 418

12 **NANCY PENA-VASQUEZ**

13 242 Pima Avenue, Apt #B
14 West Covina, CA 91790

15 Registered Nurse License No. 721239
Public Health Nurse License No. 84268

A C C U S A T I O N

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs (Board).

23 2. On or about February 25, 2008, the Board issued Registered Nurse License No.
24 721239 to Nancy Pena-Vasquez (Respondent). The Registered Nurse License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on August 31, 2013,
26 unless renewed. The Board issued Public Health Nurse License No. 84268 to Respondent on or
27 about October 5, 2012. The Public Health Nurse License will expire on August 31, 2013, unless
28 renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender,
6 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
7 action during the period within which the license may be renewed, restored, reissued or
8 reinstated.

9 5. Section 490 provides:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code."

24 6. Section 2750 provides, in pertinent part, that the Board may discipline any licensee,
25 including a licensee holding a temporary or an inactive license, for any reason provided in Article
26 3 (commencing with section 2750) of the Nursing Practice Act.

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1 7. Section 2761 provides, in pertinent part:

2 "The board may take disciplinary action against a certified or licensed nurse or deny an
3 application for a certificate or license for any of the following:

4 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

5

6 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
7 violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice
8 Act] or regulations adopted pursuant to it.

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10 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
11 functions, and duties of a registered nurse, in which event the record of the conviction shall be
12 conclusive evidence thereof. . . ."

13 8. Section 2762 of the Code states:

14 "In addition to other acts constituting unprofessional conduct within the meaning of this
15 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
16 chapter to do any of the following:

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18 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
19 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
20 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
21 himself or herself, any other person, or the public or to the extent that such use impairs his or her
22 ability to conduct with safety to the public the practice authorized by his or her license.

23 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
24 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
25 or the possession of, or falsification of a record pertaining to, the substances described in
26 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
27 thereof. . . ."

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1 9. Section 2764 states, in pertinent part, that the expiration of a license shall not deprive
2 the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to
3 render a decision imposing discipline on the license. Under section 2811, subdivision (b), the
4 Board may renew an expired license at any time within eight (8) years after the expiration.

5 **REGULATORY PROVISION**

6 10. California Code of Regulations, title 16, section 1444, states, in pertinent part:

7 "A conviction or act shall be considered to be substantially related to the qualifications,
8 functions or duties of a registered nurse if to a substantial degree it evidences the present or
9 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
10 safety, or welfare. . . ."

11 **COST RECOVERY**

12 11. Section 125.3 states, in pertinent part, that the Board may request the administrative
13 law judge to direct a licensee found to have committed a violation or violations of the licensing
14 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
15 case.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Conviction of a Substantially-Related Crime)**

18 12. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
19 (f), in conjunction with California Code of Regulations, title 16, section 1444, in that on or about
20 July 12, 2011, Respondent was convicted of a crime substantially related to the qualifications,
21 functions or duties of a registered nurse which to a substantial degree evidences her present or
22 potential unfitness to practice in a manner consistent with the public health, safety, or welfare, as
23 follows:

24 a. On or about July 12, 2011, after pleading nolo contendere, Respondent was convicted
25 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving
26 under the influence of alcohol and/or drugs]; and one misdemeanor count of violating Vehicle
27 Code section 20002, subdivision (a) [hit and run: property damage], in the criminal proceeding
28 entitled *The People of the State of California v. Nancy Pena Vasquez* (Super. Ct. Los Angeles

1 County, 2011, No. 1JB03502). The court suspended imposition of sentence and placed
2 Respondent on probation for a period of 3 years. The court also ordered her to serve 10 days of
3 jail, participate in a nine month first offender alcohol/drug program, and fined her in the total
4 amount of \$1,933.00.

5 The circumstances surrounding the conviction are that on or about February 24, 2011, West
6 Covina Police officers were dispatched to investigate a hit and run accident. During the
7 investigation, the officers observed the vehicle that was involved in the hit and run accident
8 parked in a residential location. The officers found Respondent standing near the vehicle and
9 after interviewing her, determined that Respondent was the driver of the vehicle. The officers
10 also observed that Respondent appeared to be under the influence of an alcoholic beverage. The
11 Respondent admitted to the officers that she had, "three drinks" and agreed to a series of field
12 sobriety tests. She was unable, however, to complete the tests and stated to the officers, "I can't
13 do that, I'm drunk." Respondent was convicted of violating Vehicle Code section 23152,
14 subdivision (a) and Vehicle Code section 20002, subdivision (a).

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Alcohol and / or Drug Related Conviction)**

17 13. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
18 2762, subdivision (c), on the grounds of unprofessional conduct, in that on or about July 12,
19 2011, Respondent was convicted of a crime involving alcoholic beverages. Complainant refers
20 to, and by this reference incorporates, the allegations set forth above in paragraph 12,
21 subparagraph (a), inclusive, as though set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Alcohol and / or Drugs)**

24 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
25 2762, subdivision (b), on the grounds of unprofessional conduct, Respondent dangerously used
26 alcoholic beverages and /or drugs to an extent or in a manner dangerous or injurious to herself or
27 others on February 24, 2011. Complainant refers to, and by this reference incorporates, the
28 allegations set forth above in paragraph 12, subparagraph (a), inclusive, as though set forth fully.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct / Violate Act)**

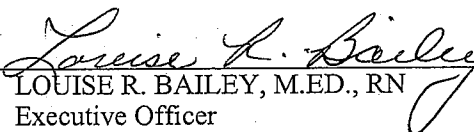
3 15. Respondent is subject to disciplinary action under sections 2761, subdivisions (a)
4 and/or (d), in that Respondent committed acts of unprofessional conduct and / or acts violating
5 the Nursing Practice Act. Complainant refers to, and by this reference incorporates, the
6 allegations set forth above in paragraphs 12 through 14, inclusive, as though set forth fully.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board issue a decision:

- 10 1. Revoking or suspending Registered Nurse License No. 721239, issued to Nancy
11 Pena-Vasquez;
- 12 2. Ordering Nancy Pena-Vasquez to pay the Board the reasonable costs of the
13 investigation and enforcement of this case, pursuant to section 125.3; and
- 14 3. Taking such other and further action as deemed necessary and proper.

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16 DATED: NOVEMBER 21, 2012


LOUISE R. BAILEY, M.Ed., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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